Changes in the Regulations Governing Eagle Permitting Questions and Answers

What action is the Service taking?

The Service is amending regulations at 50 CFR 22.26 for permits authorizing take of golden eagles (*Aquila chrysaetos*) and bald eagles (*Haliaeetus leucocephalus*) for take that is associated with, but not the purpose of, an otherwise lawful activity. The new Duration Rule extends the maximum term for programmatic permits from five to 30 years, provided that the permit incorporates specific measures that may be necessary to ensure the preservation of eagles. This change will facilitate the responsible development of projects that will be in operation for many decades while being consistent with statutory mandates protecting eagles.

Today's rule changes also amend the schedule of permit fees set forth at 50 CFR 13.11 by substantially increasing the fees charged for such programmatic permits. Additionally, changes have been made to allow programmatic permits to be transferable to new owners of projects (50 CFR 13.25: transfer of permits and scope of permit authorization) and to ensure that any successors to the permittee are qualified and committed to carrying out the conditions of the permit (50 CFR 13.24: right of succession by certain persons).

What other actions related to this eagle rule will be forthcoming?

In April 2012, the Service issued an Advance Notice of Proposed Rulemaking (ANPR) seeking public input on the Bald and Golden Eagle Protection Act Permit Program along with the Duration Rule. We are proposing to revise certain permit regulations (50 CFR 22.26 and 22.27) under the Bald and Golden Eagle Protection Act for non-purposeful take of eagles. A National Environmental Policy Act document will be prepared for this rulemaking and tribes will be consulted on this action. In addition to written public comment, the Service will host a series of regional workshops in 2014 on the regulations. See

http://www.fws.gov/policy/library/2012/2012-8086.pdf for more information about the ANPR.

What laws protect eagles?

The Bald and Golden Eagle Protection Act (Eagle Act) prohibits take of eagles and defines "take" as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb individuals, their nests and eggs. "Disturb" was defined by regulation at 50 CFR 22.3 in 2007 as "to agitate or bother a bald or golden eagle to a degree that causes…injury to an eagle, a decrease in productivity, or nest abandonment…" Bald eagles and golden eagles also are federally protected under the Migratory Bird Treaty Act. The Eagle Act allows the Service to authorize the take of some individual birds, provided the take is associated with, but not the purpose of, an otherwise lawful activity and does not have a long-term impact on the population.

How are eagles managed under the Eagle Act?

The Fish and Wildlife Service and its partners manage bald eagles and golden eagles by conducting surveys of eagle populations, implementing a robust eagle research program, and working with partners, the regulated community, and individuals to reduce potential harmful interactions with eagles. Through these programs we are gaining important new insights into eagle populations throughout the country that will lead to improved conservation and management.

In 2009, the Service created two new permit regulations for eagles. 50 CFR 22.26 authorizes limited take of bald and golden eagles when the take is associated with, but not the purpose of an otherwise lawful activity, and cannot practicably be avoided. 50 CFR 22.27 provides for the intentional take of eagle nests where necessary to alleviate a safety hazard to people or eagles, to ensure public health and safety, where a nest prevents use of a human-engineered structure, and where the activity or mitigation for the activity will provide a net benefit to eagles.

Why were the 2009 regulations implemented?

When the bald eagle was protected under the Endangered Species Act (ESA), take of bald eagles incidental to an otherwise lawful activity was managed through the ESA's incidental take permit process. When the bald eagle was recovered and removed from the Endangered Species List in 2007, no regulations existed under the Eagle Act to authorize disturbance and other incidental take of either the bald or golden eagle. As a result, the Service developed the 2009 regulations to provide permits for activities or projects that result in such take.

What is a programmatic permit?

Programmatic permits authorize recurring take that is unavoidable even after implementation of Advanced Conservation Practices (ACPs). "Programmatic take" is defined as "take that is recurring, is not caused solely by indirect effects, and that occurs over the long term or in a location or locations that cannot be specifically identified." Programmatic permits can be issued for disturbance as well as take resulting in mortality, based on implementation of ACPs developed in coordination with the Service. ACPs are defined as "scientifically supportable measures that are approved by the Service and represent the best available techniques to reduce eagle disturbance and ongoing mortalities to a level where remaining take is unavoidable." Most authorized take has been in the form of disturbance; however, permits may authorize lethal take that is incidental to an otherwise lawful activity, such as mortalities caused by collisions with rotating wind turbines.

What types of activities need a programmatic permit?

Any person undertaking an activity that results in the recurring take of a bald eagle or golden eagle should seek and obtain a programmatic permit authorizing such take from the Service. Programmatic permits can be issued for otherwise lawful activities that may take eagles. For instance wind, solar and other energy projects as well as electric transmission and distribution lines, airports, timber operations, are some activities with a potential to take eagles on a recurring basis.

How will the Service ensure adequate protection for eagles during the longer lifespans of these permits?

The rule enables the Service to incorporate ACPs and other conservation measures the permit holder is required to implement if take exceeds predicted levels or if new information indicates that such measures are necessary to meet the preservation standard. Permits for periods longer than five years will be available only to applicants who commit to implementing these adaptive measures if monitoring shows these measures are needed and likely to be effective. Any required adaptive management measures will be negotiated with the permittee and specified in the terms and conditions of the permit.

What is the five-year review?

Permittees will be required to submit annual reports on eagle monitoring and any eagles found injured or dead at their facility. At no more than five-year intervals from the date a permit is issued, the permittee will compile a report documenting fatality and other pertinent information for the project and submit the report to the Service. The Service will make mortality information from both the annual and the five-year compilation report available to the public.

The Service will evaluate each permit at no more than five-year intervals. These evaluations will reassess fatality rates, effectiveness of measures to reduce take, the appropriate level of compensatory mitigation, and eagle population status. Depending on the findings of the review, permittees may be required to undertake additional conservation measures consistent with the permit.

Why are these changes necessary?

Since publication of the 2009 final rule, the Service has reviewed applications from proponents of large wind farms for programmatic permits to authorize eagle take that may result from ongoing operations of these projects. During these reviews, it became evident that the five-year term limit imposed by the 2009 regulations (see 50 CFR 22.26(h)) needed to be extended to better correspond to the operating life of the projects.

What public process did the Service follow to arrive at the decision to extend the permit duration from five to 30 years?

The Service has worked for more than a year to gather public and stakeholder input on this proposal. The draft rule was first published in April 2012 and public comments were received for 90 days. The Service has engaged in extensive outreach with interested stakeholders and carefully reviewed and addressed comments received throughout the process.

How will fees change as a result of the rule?

This rule amends the schedule of permit fees set forth at 50 CFR 13.11 by substantially increasing the fees to be charged for processing programmatic permit applications. Prior to this rulemaking, the fee for such permits was \$1,000. Fees for processing amendments of such permits were \$500.

For programmatic permits, the fee is now \$36,000. The Service also will collect permit administration fees, based on the duration of the permits, to recover the Service costs for monitoring and working with the permittees throughout the lives of the permits. The permit administration fee is \$2,600 for each five-year period the permit is in effect. The processing fee for amending a programmatic permit, regardless of duration, is set at \$1,000, and the fee for the transfer of a programmatic permit is also \$1,000. The application processing fee for programmatic permits for low-risk projects that are expected to have negligible effects on eagles is \$8,000.

Why have these fees increased?

The increased fees are necessary to enable the Service to recoup the cost of processing these permits and ensure adequate monitoring throughout the now extended life of the permit. The Service's experience to date has demonstrated existing fees are inadequate and significantly less than the actual cost to the Service of reviewing and processing programmatic permit applications, including the costs of monitoring the implementation of such permits. Feedback from developers indicates these permit fees are reasonable.

Why have changes been made to regulations governing the transfer of permits?

The Service revised regulations governing the transfer of programmatic eagle take permits to recognize that, during the term of the permit, several owners may purchase or resell the permitted project or the land on which it is located. The rule changes allow permits to be transferred to the new owners if they agree to the original permit conditions.

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